IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

CRL.A.No. 1205 of 2003()

AGAINST THE ORDER IN CRLP.125/2003 Dated 26/06/2003
ST.92/2001 of JUDL.MAGISTRATE OF FIRST CLASS COURT-V,
(SPECIAL COURT FOR MARKLIST CASES), THIRUVANANTHAPURAM

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APPELLANT: COMPLAINANTS

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1. P.R.SOMASEKHARAN NAIR (DIED)
   KAUSTHUBHUM PALLIPURAM, KANIYAPURAM, TRIVANDRUM.

2. S.MANOJ, S/O. P.R.SOMASEKHARAN NAIR,
   KAUSTHUBHUM, PALLIPURAM, KANIYAPURAM, TRIVANDRUM.
   (2ND APPELLANT WAS IMPLEADED IN THE COURT BELOW
   AS LEGAL REPRESENTATIVE OF 1ST APPELLANT AS PER
   ORDER DATED 13-12-2002)

BY ADV. SRI.V.R.GOPU

RESPONDENTS: STATE OF KERALA & ACCUSED

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1. STATE OF KERALA, REPRESENTED BY PUBLIC
   PROSECUTOR, HIGH COURT OF KERALA.

2. K.V.DEVARAJAN, U.D.AUDITOR
   (HIGHER GRADE), DIRECTOR OF COLLEGIAGTE EDUCATION,
   VIKAS BHAVAN, TRIVANDRUM.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.A.No.1205 of 2003(A)

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Dated this the 25th day of October, 2007

J U D G M E N T

The second appellant is the legal representative of the deceased complainant in S.T.No.92/2001 in the file of the Judicial Magistrate of the First Class-V, (Special Court for Marklist Cases), Thiruvananthapuram, with respect to the proceedings initiated under Section 138 of the Negotiable Instruments Act. The accused was acquitted under Section 256(i) of the Code of Criminal Procedure. It is submitted that the lapse was occasioned on account of wrong noting of the posting date.

In the circumstances, the order of acquittal is set aside. The court below is directed to permit the second appellant to further pursue the matter and dispose of the case on merits. The second appellant shall appear before the court below on 28/11/2007. The court below shall issue fresh summons to the accused.

The appeal is allowed.

Sd/-
K.R.UDAYABHANU,
Judge

ms

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P.A.to Judge